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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 10

Application Number: 09/862,946
Filing Date: May 22, 2001
Appellant(s): GODINOT et al.

MAILED

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GROUP 3600

Joseph F. Leightner
Registration no. 34,209
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/18/2003.

(1)	***Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

(2)	***Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or

be directly affected by or have a bearing on the decision in the pending appeal is contained in the

brief.

(3)	***Status of Claims***

The statement of the status of the claims contained in the brief is correct.

(4)	***Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in

the brief is correct.

(5)	***Summary of Invention***

The summary of invention contained in the brief is correct.

(6)	***Issues***

The appellant's statement of the issues in the brief is incorrect.

The appellant fails to mention whether the inventions of claims 1 and 13 are indefinite under 35 U.S.C. 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention (asking the subject to rate from about 4 to about 6 attributes).

However, the 35 U.S.C. 112 second paragraph rejections of Claims 1 and 13 are withdrawn after further consideration.

(7) ***Grouping of Claims***

Appellant's brief includes statements that claims 1-6 stand together, and claims 13-18 stand together for purposes of this appeal. However, in view of the appellant's single argument grouping claims 1-6 and 13-18 together, claims 1-6 and 13-18 will be considered one grouping by the examiner.

(8) ***Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) ***Prior Art of Record***

Darrington, Hugh, "Extra sensory perception." Food Manufacture, v65, n8, p51(2), October 1990.

(10) ***Grounds of Rejection***

Claim Rejections - 35 USC § 112

1. The rejection of Claims 1 and 13 under 35 U.S.C. 112, second paragraph, is withdrawn

after further consideration.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
> in section 102 of this title, if the differences between the subject matter sought to be patented and the
> prior art are such that the subject matter as a whole would have been obvious at the time the invention
> was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability
> shall not be negatived by the manner in which the invention was made.

3. **Claims 1-6 and 13-18 are rejected under 35 U.S.C. 103(a) as being obvious over**

Reading Scientific Services Ltd (Darringtion, Hugh, "Extra sensory perception."

Food Manufacture, v65, n8, p51(2), October 1990).

4. As per independent Claim 1, RSSL discloses a method for visually presenting the taste

attributes of a sample comprising: (a) providing a subject; (b) providing the subject with

a sensory perception scale for taste on a computing device using a plurality of attributes

selected from the group consisting of sweetness, saltiness (salty), bitterness, sourness,

mintiness, coolness, grittiness, burning, biting, tingling, bad after taste, and metallic; said

sensory perception scale having variable positions; (c) providing the subject with a test

sample and requesting said subject to sample the test sample; (d) asking the subject to

rate from about 4 to about 6 attributes of the samples selected from the group consisting

of sweetness, saltiness, bitterness, sourness, mintiness, coolness, grittiness, burning,

biting, tingling, bad after taste, and metallic; by manipulating the positions of the

perception scale; and (e) providing the position of the variable position scale to a

computing means, said computing means providing a simultaneous visual interpretation

on a screen of the attributes of the sample (line scale and spider map) (Darringtion, Hugh,

"Extra sensory perception." Food Manufacture, v65, n8, p51(2), October 1990).

5. RSSL fails to expressly disclose wherein the computer device contains a plurality of

    attributes in which to rate the sample.

6. However, RSSL does teach that the panel (subject) discusses how they will vocabularise

    their evaluation before each sample is tested, and it would have been obvious to one of

    ordinary skill I the art at the time the invention was made to incorporate a list of set

    attributes for the subject to pick from for the advantage of standardizing and increasing

    the efficiency of the evaluation process.

7. As per Claims 2-3 and 14-15, RSSL fails to distinctly disclose wherein the visual

    interpretation of the attributes of the sample is provided as a pie chart / single bar chart.

8. However, RSSL does teach a visual interpretation of the attributes of the sample as part

    of a multi-axis chart / spider map (Darringtion, Hugh, "Extra sensory perception." Food

    Manufacture, v65, n8, p51(2), October 1990).

9. Official Notice is taken that the use of pie charts / single bar charts were well known at

    the time the invention was made for the benefit of visually displaying data for better

    comprehension and analysis. Therefore, it would have been obvious to one of ordinary

    skill in the art at the time the invention was made to have included wherein the visual

    interpretation of the attributes of the sample is provided as a pie chart / single bar chart, in

the system disclosed by RSSL, for the advantage of providing a method for visually

presenting the attributes of a sensory perception, with the ability to present the data in

several chart formats in order to more clearly relay the information to the customer.

10. As per Claims 4-5 and 16-17, RSSL discloses wherein the relative value of each attribute

is provided by a unique color (Darringtion, Hugh, "Extra sensory perception." Food

Manufacture, v65, n8, p51(2), October 1990).

11. As per Claims 6 and 18, RSSL discloses wherein the visual interpretation of the attributes

of the sample is generated without having the subject perform any mathematical

computation (Darringtion, Hugh, "Extra sensory perception." Food Manufacture, v65, n8,

p51(2), October 1990).

12. As per independent Claim 13, RSSL discloses a method for visually presenting the

olfactory (smell) attributes of a sample comprising: (a) providing a subject; (b) providing

the subject with a sensory perception scale for olfaction on a computing device *using* (see

rejection for independent Claim 1) a plurality of attributes; (c) providing the subject with

a test sample and requesting said subject to sample the test sample; (d) asking the subject

to rate from about 4 to about 6 attributes of the samples; and (e) providing the position of

the variable position scale to a computing means, said computing means providing a

simultaneous visual interpretation on a screen of the attributes of the sample (Darringtion,

Hugh, "Extra sensory perception." Food Manufacture, v65, n8, p51(2), October 1990).

13. RSSL fails to expressly disclose a computing device containing a plurality of attributes

selected from the group consisting of citrus, floral fruity, woody spicy leathery,

herbaceous, musk, amber, and oriental; said sensory perception scale having variable

positions.

14. However, RSSL does teach the sensory evaluation of products to include aroma (smell)

(Darringtion, Hugh, "Extra sensory perception." Food Manufacture, v65, n8, p51(2),

October 1990).

15. Official Notice is taken that citrus, floral fruity, woody spicy leathery, herbaceous, musk,

amber, and oriental were well known as adjectives used to describe aromas/smells at the

time the invention was made. Therefore, it would have been obvious to one of ordinary

skill in the art at the time the invention was made to specify the type of aroma as citrus,

floral fruity, woody spicy leathery, herbaceous, musk, amber, or oriental, in the system

disclosed by RSSL for the advantage of providing a method for visually presenting the

olfactory (smell) attributes of a sample with the ability to categorize the aromas by

commonly distinct characteristics.

(11)   Response to Argument

1. The Appellant makes the argument that the prior art of RSSL fails to disclose

   or suggest the specific attributes to score the taste attributes, fails to suggest

   that 4-6 attributes (about 4 to about 6 attributes) be used, and also fails to

   suggest frangranced products.

2. However, RSSL does disclose using attributes (evaluation vocab) such as

   shiny, salty, crumbly, mouthfeel, texture, and aroma. RSSL also discloses

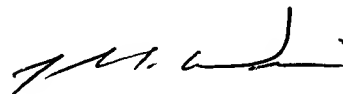   scoring all sensory parameters to include smell (aroma).

3. Finally, while RSSL does not disclose scoring from about 4 to about 6 attributes, RSSL does disclose producing a descriptive profile of a product by evaluating (scoring) sensory parameters on a line scale, and determining a number of attributes (evaluation vocab) on which to evaluate a product (the reference describes 6 attributes used for evaluating cheese).

4. Furthermore, the appellant's specification fails to clarify why about 4 to about 6 attributes is critical to the method, and why about 4 to about 6 attributes would produce unexpected results; but rather explains that the number of attributes or qualities can be varied across studies as to specifically tailor the study to the stimuli to be tested (pg.4 of specification)

5. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use from about 4 to about 6 attributes in the system disclosed by RSSL, for the advantage of providing a method for visually presenting attributes of a sample, with the ability to increase system effectiveness by allowing the user to select the attribute range to fit the product/stimuli being tested.

6. The Appellant also makes the argument that the prior art of RSSL fails to suggest having the panelist: 1) manipulate the various recited attributes, which are then simultaneously put into a single score that the panelist can visualize; and 2) then adjust the attributes as they see fit based upon the automatic feedback provided by the claimed invention.

7. However, RSSL does teach a visual interpretation of the attributes of the sample as part of a line scale and spider map (multi-axis chart) in order to create a descriptive profile (Darringtion, Hugh, "Extra sensory perception." Food Manufacture, v65, n8, p51(2), October 1990).

8. Furthermore, as explained in the rejection about, official notice is taken that the use of pie charts / single bar charts (simultaneous data representation) were well known at the time the invention was made for the benefit of visually displaying data for better comprehension and analysis (the appellant describes the use of Microsoft Excel for graphical representation and computation of the relative values of the attribute, pg.7 of the specification). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included manipulation of the various recited attributes, which are then simultaneously put into a single score that the panelist can visualize, in the system disclosed by RSSL, for the advantage of providing a method for visually presenting the attributes of a sensory perception, with the ability to present the data in a visual format in order to more clearly relay the data/information patterns to the user.

9. Finally, the element argued above, wherein the user adjusts the attributes as they see fit based upon the automatic feedback provided by the claimed invention, is not claimed in the invention and is instead a use of the claimed invention, and therefore, contains no merit.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JO

March 17, 2004

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